85-1691

No.____

Supreme Court, U.S.
FILED
APR 15 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

SANFORD BERNSTEIN,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA, JAMES MCCARTHY, COUNTY OF LEHIGH, WILLIAM PLATT, ANTHONY PADRONE, WULF HEUSINGER, THOMAS MURTAUGH, DONALD LAYTON, DALE YEAGER, MICHAEL ALVIN, JIMMY H. COLEMAN, NANCY H. BERNSTEIN, CATASAQUA POLICE DEPARTMENT, ALLENTOWN POLICE DEPARTMENT, WOODROW KEISER,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Elizabeth K. Ainslie, Esquire
3100 PSFS Building
Philadelphia, Pa. 19107
(215) 574-0800

Robert J. Vedatsky, Esquire*
Theodore Q. Thompson, Esquire**

VEDATSKY & ASSOCIATES
Packard Bldg., 24th Floor
15th & Chestnut Streets
Philadelphia, PA 19102
(215) 922-7318

Attorneys for Petitioner
**Counsel of Record in Court of Appeals*
***Counsel of Record in District Court*

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

30pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the principles of *Wilson v. Garcia*, ____U.S. ____, 105 S.Ct. 1938 (1985), which held that an action under 42 U.S.C. §1983 must be characterized as a personal injury action for the purpose of borrowing the appropriate state statute of limitations, should be extended to actions under 42 U.S.C. §§1981 and 1985.

2. Whether the principles set forth in *Wilson v. Garcia*, should be applied retroactively.

3. Whether the Court of Appeals applied an improper standard for a continuing conspiracy, in ruling that for statute of limitations purposes, petitioner's cause of action accrued when he knew, or with reasonable diligence should have known, of the conspiracy.

4. Whether this Court should exercise its power of supervision to review the decisions of the courts below concerning: a) the dismissal of petitioner's claims under 42 U.S.C. §§1981, 1985, and 1986, upon the ground that his cause of action could be maintained under 42 U.S.C. §1983; b) the dismissal of petitioner's claims against Lehigh County and its prosecutor; and c) the failure of the courts below to address or rule upon contentions raised by petitioner.

5. Whether this case should be remanded to the Court of Appeals or the District Court for further proceedings, or for clarification of the record.

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

Petitioner Sanford Bernstein was the plaintiff in the District Court and the Appellant in the Court of Appeals below. Respondents Anthony Padrone, Wulf Heusinger, Thomas Murtaugh, Michael Alvin, Jimmy H. Coleman, Nancy Bernstein, the County of Lehigh, District Attorney William Platt, Dale Yeager, the Catasaqua Police Department, the Allentown Police Department, and Woodrow Keiser, were defendants in the District Court and Appellees in the Court of Appeals. The dismissal of the claims against the remaining defendants named in the complaint (Appendix[1] at A-78) was not challenged in the Court of Appeals.[2]

---

1. The Appendix filed herewith pursuant to Supreme Court Rule 21.1.(k) is referred to interchangeably as "Appendix" or "App." The Appendix pages are numbered "A-1" *et seq.* for reference.

2. By Order entered September 29, 1983, the District Court granted a motion to dismiss the complaint filed by the Commonwealth of Pennsylvania, and motions for summary judgment filed by Defendants James McCarthy and Donald Layton (App. at A-4 to A-6); the rulings as to these defendants was not appealed.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	3
STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	13

TABLE OF AUTHORITIES

Cases: Page

Al-Khazraji v. St. Francis College, 784 F.2d 505 (3d Cir. 1986) 15

Anderson v. University Health Center, 623 F.Supp. 795 (W.D.Pa. 1985) 16

Bergschneider v. Denver, 446 F.2d 569 (9th Cir. 1971) 21

Bernstein v. Commonwealth of Pennsylvania, et al., No. 85-1371 (3d Cir. Jan. 15, 1986)..... 2, 13, 21

Bernstein v. Commonwealth of Pennsylvania et al., E.D. Pa. No. 83-3431 (Order Sept. 29, 1983).. 2

Bernstein v. Padrone, No. 83-3431 order/ memorandum (E.D. Pa., May 13, 1985) 2

Bernstein v. Padrone, No. 83-3431, memorandum opinion (E.D. Pa., Feb. 8, 1985)..... 2, 24

Bernstein v. Ryan, et al., No. 84-3700 (E.D.Pa.) .. 9

Berry v. E. I. DuPont De Nemours & Co., 625 F.Supp. 1364 (D. Del. 1985) 16

Blackwelder v. Millman, 522 F.2d 766 (4th Cir. 1975) 21

Board of Regents v. Tomanio, 446 U.S. 478 (1980) 15

Brown v. Elliot, 225 U.S. 392, 401 (1912)..... 21

Buford v. Tremayne, 747 F.2d 445 (8th Cir. 1984). 21

Burnett v. Grattan, ____ U.S. ____, 104 S.Ct. 2924 (1984) 15

Chevron Oil Company v. Huson, 404 U.S. 97 (1971) 15, 17, 18

Cope v. Anderson, 331 U.S. 461 (1947) 21

TABLE OF AUTHORITIES—(*Continued*)

Cases: Page

Commonwealth of Pennsylvania v. Bernstein, 309 Pa. Super. 573, 455 A.2d 1232 (1983) 5, 6, 7

Deary v. Three Un-Named Police Officers, 746 F.2d 185 (3d Cir. 1984) 15, 21

Dupree v. Hertz Corp., 419 F.Supp. 764 (E.D. Pa. 1976) 20

Fisher v. Whiton, 317 U.S. 217 (1942) 21

Fiswick v. United States, 329 U.S. 211, 216 (1946) 21

Gibson v. United States, 781 F.2d 1334 (9th Cir. 1986) 16, 17

Goodman v. Lukens Steel Co., 777 F.2d 113 (3d Cir. 1985) ..... *passim*

Hobson v. Brennan, 625 F.Supp. 459 (D.D.C. 1985) 16

Mineo v. Port Authority of New York & New Jersey, 779 F.2d 939 (3d Cir. 1985) 20

Mulligan v. Hazard, 777 F.2d 340 (6th Cir. 1985). 16

Pender v. National Railroad Passenger Corp., 625 F.Supp. 252 (D.D.C. 1985) 16

Polite v. Diehl, 507 F.2d 119 (3d Cir. 1974) (en banc) 15

Portnoy v. Pennick, 595 F.Supp. 1000 (M.D. Pa. 1984) 20

Rawlings v. Ray, 312 U.S. 96 (1941) 21

Rivera v. Green, 775 F.2d 1381 (9th Cir. 1985). 16, 17

Safeguard Mutual Insurance Co. v. Miller, 477 F.Supp. 299 (E.D. Pa. 1979) 20

TABLE OF AUTHORITIES—*(Continued)*

Cases: Page

Saldivar v. Cadena, 622 F.Supp. 949 (W.D. Wisc. 1985) 16

Wells v. Rockefeller, 728 F.2d 209 (3d Cir. 1984).. 21

White v. Bloom, 621 F.2d 276 (8th Cir. 1980), *cert. denied*, 449 U.S. 995 (1981)..... 21

Wilson v. Garcia, ____ U.S. ____, 105 S.Ct. 1938 (1985)..... *passim*

Statutes:

28 U.S.C. §1254(1) 3

28 U.S.C. §1331..... 4

28 U.S.C. §1343..... 4

42 U.S.C. §1981..... *passim*

42 U.S.C. §1983..... *passim*

42 U.S.C. §1985..... *passim*

42 U.S.C. §1986..... *passim*

42 U.S.C. §1988..... 14

42 Pa. Cons. Stat. Ann. §902..... 5

42 Pa. Cons. Stat. Ann. §5524 (Purdon 1981) (amended 1982) ..... *passim*

42 Pa. Cons. Stat. Ann. §5527 (Purdon 1981) (amended 1982) ..... *passim*

42 Pa. Cons. Stat. Ann. §5524 (Purdon Supp. 1985)..... *passim*

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

SANFORD BERNSTEIN,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA, JAMES MCCARTHY, COUNTY OF LEHIGH, WILLIAM PLATT, ANTHONY PADRONE, WULF HEUSINGER, THOMAS MURTAUGH, DONALD LAYTON, DALE YEAGER, MICHAEL ALVIN, JIMMY H. COLEMAN, NANCY H. BERNSTEIN, CATASAUQUA POLICE DEPARTMENT, ALLENTOWN POLICE DEPARTMENT, WOODROW KEISER,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Sanford Bernstein (hereinafter "petitioner" or "Bernstein") respectfully petitions this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit dated January 15, 1986 insofar as the Court of Appeals applied the reasoning of this Court's recent decision in *Wilson v. Garcia*, ____U.S. ____, 105 S.Ct. 1938 (1985), and held that petitioner's civil rights claims under 42 U.S.C. §§ 1981, 1983, 1985(1) (2) & (3) and 1986 are time-barred by Pennsylvania's two-year statute of limitations 42 Pa. Cons. Stat. Ann. § 5524 (Purdon Supp. 1984).

OPINIONS BELOW

The unreported Order of the District Court entered September 29, 1983, dismissing petitioner's claims based upon 42 U.S.C. §§ 1981, 1985 and 1986, on the basis that petitioner's cause of action can be maintained pursuant to 42. U.S.C. § 1983, *Bernstein v. Commonwealth of Pennsylvania, et al.*, E.D.Pa. No. 83-3431, Order Sept. 29, 1983), is reproduced in the Appendix at A-4 to A-6.

The Memorandum Opinion and Order of the District Court entered February 8, 1985, *inter alia*, granting respondents' motions for summary judgment, and entering judgment in favor of respondents and against petitioner regarding the Section 1983 claims (*Bernstein v. Padrone, et. al.*, E.D.Pa. No. 83-3431, Feb. 8, 1985), are reproduced in the Appendix at A-7 to A-15 and A-16 respectively.

The Order/Memorandum of the District Court entered May 13, 1985, denying petitioner's motion for reconsideration on the basis of *Wilson v. Garcia*, ____U.S. ____, 105 S.Ct. 1938 (1985), and rejecting petitioner's claim that respondents' May 1983 conduct extends the two-year limitation period for the conspiracy claims (*Bernstein v. Padrone, et. al*, E.D.Pa. No. 83-3431, Order May 13, 1985), is reproduced in the Appendix at A-17.

The unreported Memorandum Opinion of the Court of Appeals in *Bernstein v. Commonwealth of Pennsylvania, et. al.* No. 85-1371 (3d Cir, Jan. 15, 1986), in which the Third Circuit relied primarily upon its recent decision in *Goodman v. Lukens Steel Co.*, 777 F.2d 113 (3d Cir. 1985)[3] in affirming the District Court's decisions

3. A petition for a writ of certorari in *Goodman v. Lukens, Id.*, raising statute of limitations questions regarding 42 U.S.C. §1981, substantially similar to those set forth here, was filed on April 4, 1986. A copy of the *Lukens Steel* Opinion, and Order amending Opinion, slip op. No. 84-1478 and 84-1509 (Nov. 13, 1985), are reproduced in the Appendix at A-18, and A-71 respectively.

and holding that petitioner's section 1981, 1983, 1985 and 1986 claims are time-barred by Pennsylvania's two-year statute of limitations 42 Pa. Cons. Stat. Ann. § 5524 (Purdon Supp. 1984). is reproduced in the Appendix at A-1 to A-3.

JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on January 15, 1986. (App. at A-1). This Petition For A Writ of Certiorari is filed within ninety (90) days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This petition involves consideration of the following statutory provisions: 42 U.S.C. §§ 1981, 1983, 1985, 1986; 42 Pa. Cons. Stat. Ann. §§ 5524, 5527. The full text of each of these statutes is set forth in the Appendix at A-73.

STATEMENT OF THE CASE

On July 18, 1983, petitioner filed a complaint[4] in the United States District Court for the Eastern District of Pennsylvania against Anthony Padrone ("Padrone"), Thomas Murtaugh ("Murtaugh"), Michael Alvin ("Alvin"), Jimmy H. Coleman ("Coleman"), Wulf Heusinger ("Heusinger"), Nancy Bernstein ("Mrs. Bernstein"), District Attorney William Platt, and others[5],

---

4. The complaint with attachments (Exhibit "A" through "G" to the complaint) consists of 190 pages. Accordingly, a copy of the complaint without exhibits is reproduced in the Appendix at A-80; and pursuant to Supreme Court Rule 13, petitioner has requested the Clerk of the United States Court of Appeals for the Third Circuit to certify relevant portions of the record (including the original complaint with exhibits) to this Court.

5. Pursuant to Supreme Court Rule 21.1(b), a complete list of Respondents who were parties in the Court below is set forth *supra*

inter alia, seeking injuctive relief and damages for alleged civil rights violations under 42 U.S.C. §§ 1981, 1983, 1985(1), (2), & (3), and 1986. The district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

The complaint alleges, *inter alia*, that petitioner's estranged wife Nancy Bernstein conspired with police officers (who also worked for her as private security guards), prosecutors and others to have petitioner falsely charged, convicted and imprisoned for solicitation to commit murder; and that after petitioner was convicted, they committed perjury, solicited perjured testimony, intimidated witnesses and otherwise obstructed justice, to keep him in jail, and to block his attempts to overturn the conviction. The complaint alleges that anti-semitism and substantial financial gain motivated the conspiracy, which began in about December, 1978 and continued through July, 1983, when the lawsuit was filed in the district court. (See complaint, *App.* A-80).

Factual Background

The relevant facts, which led to the filing of the complaint, are as follows. On September 24, 1979, petitioner was convicted in the Court of Common Pleas of Dauphin County Pennsylvania,[6] of solicitation to murder his es-

NOTES *(Continued)*

at page ii, together with an explanation of the disposition of claims against party-defendants named in the complaint who are not respondents in these proceedings. *Supra, n.* 2.

6. The criminal complaint was originally filed in Lehigh County, Pennsylvania. After a preliminary hearing, the matter was bound over and District Attorney William Platt filed a criminal information in the Court of Common Pleas of Lehigh County charging, *inter alia*, that petitioner offered $15,000.00 to Respondent Michael Alvin, a part-time, under-cover policeman with the Catasaqua Police Department, to kill Mrs. Bernstein. Due to extensive pre-trial publicity, venue was changed from Lehigh to Dauphin County (*Commonwealth v. Bernstein*, No. 836 C.D. 1979), where the matter was tried.

tranged wife Nancy Bernstein, in violation of 18 Pa. Cons. Stat. Ann. § 902. Post-trial motions were denied and on November 25, 1980, Bernstein was sentenced to serve not less than five nor more than ten years in prison, and ordered to pay a fine of $25,000.00 plus court costs, the maximum penalty under Pennsylvania law. Immediately after sentencing, bail was revoked and petitioner was taken into custody.

An appeal was taken to the Superior Court of Pennsylvania, *inter alia*, on the basis of a March 17, 1980 sworn statement in which key Commonwealth witness Jimmy H. Coleman, recanted his trial testimony. On January 28, 1983, after petitioner had spent more than two years in prison, the Superior Court vacated the sentence and remanded the matter to the trial court for an evidentiary hearing to determine the credibility of Coleman's recantation testimony. *Commonwealth v. Bernstein,* 309 Pa.Super. 573, 455 A.2d 1232 (1983). The Superior Court opinion is reproduced in the Appendix at A-92. The facts related to Coleman's trial testimony and his March 17, 1980 recantation statement, as summarized by the Superior Court in *Bernstein,* at 575, 455 A.2d at 1233-34 [footnotes omitted], are as follows:

> . . . Coleman testified at trial that appellant told him: "I want you to blow my wife away" and asked Coleman to name his price. The next day Coleman informed Mrs. Bernstein and one of her private security guards about this conversation, and they in turn informed the Allentown Police Department. Tony Padrone, an officer of the Catasaqua Police Department, and one of the number of private guards hired by Mrs. Bernstein, contrived with Coleman to arrange a telephone conversation between Coleman and appellant over which Padrone and two other officers, who also worked as private security guards for Mrs. Bernstein, might eavesdrop. In the presence of

Officers Padrone, Layton and Alvin, Coleman advised appellant by telephone that he himself could not carry out the murder but that he could arrange for someone else to do so, and pursuant to the plan of the officers, Coleman subsequently advised appellant that Alvin would be interested in the job. Coleman further testified that appellant subsequently discussed with Alvin, at an arranged meeting, the different methods of and fees for the murder of Mrs. Bernstein and delivered to Alvin the sum of $5,000.00 as partial payment for the murder.

The after-discovered evidence upon which the motion for new trial was based was a recantation statement made by Coleman in which he stated (1) that appellant only kidded about "blowing his wife away"; (2) that, following his meeting with appellant, appellant did not contact Coleman, but, rather the law enforcement officials, who also acted as private security guards for Mrs. Bernstein, were the ones who suggested that Coleman get in touch with appellant; (3) that when appellant met Alvin, Coleman did not hear any discussion concerning a plan for the murder of Mrs. Bernstein; and (4) that the officers employed by Mrs. Bernstein had told him what to say.

Id.

In remanding that matter for an evidentiary hearing, the Superior Court stated:

It is our view, however, that the after-discovered evidence, namely, the allegations in the notarized statement of Mr. Coleman, the principal Commonwealth witness, given six months after the trial, is not merely corroborative, is not merely cumulative and does not merely impeach the credibility of a witness. Rather, the post-trial statements of Mr. Coleman impact not only upon the state of mind of

> appellant during those early discussions which composed a portion of the criminal solicitation, but also upon the defense of appellant that the agents employed to guard the purported victim were provocateurs who stimulated the criminal solicitation. While it may be true that the Commonwealth produced evidence that would have enabled a finding of guilt even without the testimony of Mr. Coleman, a premise of some doubt, the testimony of Mr. Coleman was an integral part of the presentation of the Commonwealth and his testimony concerning the criminal conduct of Mr. Bernstein, as well as the activities of the agents of Mrs. Bernstein, was certainly evidence that would have received careful consideration by the jury. We conclude, therefore, that the after-discovered evidence is of sufficient substance that the Common Pleas Court must hold an evidentiary hearing to determine whether the recantation statement of Mr. Coleman is credible.

Id. at 575, 455 A.2d at 1234.

Pursuant to the Superior Court's remand order, hearings on the recantation issue were held in the Dauphin County Court of Common Pleas on April 4, July 1, August 10, and September 9, 1983. At the commencement of the April 4, 1983 hearing, Coleman asserted his Fifth Amendment privilege after the District Attorney opposed a request for immunity.

On May 5, 1983, without notice to petitioner or his attorney, Coleman was taken to the District Attorney's office by Padrone and Heusinger[7] where he gave a sworn statement (in their presence) to the effect that the substance of his testimony at trial was true, and his March

7. Coleman repeatedly accused Padrone and Heusinger of intimidating him into testifying against Bernstein at trial in the first place, and thereafter threatened him and his family with bodily harm if he changed the story he told at the trial. (See Exhibits "E," "F", and "G" to the complaint.)

17, 1980 recantation was false. Coleman was promised immunity from prosecution for his previous testimony and statements so long as he maintained that his May 5, 1983 statement was truthful and he cooperated with the Commonwealth in its case against Bernstein. (See Exhibit "D" to the complaint).

At the July 1, 1983 hearing, Coleman was granted immunity, the existence of his May 5, 1983 statement was disclosed reluctantly by the District Attorney, and Coleman testified that his recantation was false and his trial testimony was true. It was not until the July 1, 1983 hearing that petitioner learned that as late as May, 1983, Padrone and Heusinger had a hand in manipulating the latest version of Coleman's story. The complaint was filed about two weeks later in a desparate but futile effort to obtain federal injunctive relief to prevent further interference with petitioner's attempt to obtain a fair trial.

On September 9, 1983, the Court of Common Pleas[8] denied petitioner's motion for a new trial, reinstated the sentence, and again ordered that petitioner be taken into custody immediately. An appeal from that judgment was filed on September 21, 1983, which is still pending in the Pennsylvania Superior Court.[9]

---

8. Curiously, three different judges presided over the Bernstein criminal case. When the case was transferred from Lehigh to Dauphin County, it was assigned to the Honorable Richard B. Wickersham who presided at trial. After trial but before sentencing, Judge Wickersham became a Superior Court Judge. He was replaced by the Honorable John Dowling who denied the post-trial motions without an evidentiary hearing, imposed the maximum sentence, and revoked bail pending appeal. Judge Dowling also presided at the first evidentiary hearing on remand held April 4, 1983. For reasons unknown to petitioner, Judge Dowling was replaced by the Honorable Clarence C. Morrison, who presided at the other recantation hearings, denied Bernstein's motion for a new trial, and reinstated the sentence originally imposed by Judge Dowling.

9. Although his state court appeal as yet has not been resolved, to date Bernstein has served five full years in prison. He was released on parole on February 16, 1986. Bail was revoked and petitioner was denied bail pending appeal by Judge Dowling on

Bernstein has maintained consistently in the criminal and civil actions that he was "framed", and that he was and is the victim of a continuing conspiracy designed not only to deprive him of his right to due process, but, "to take [him] . . . for everything he's got . . ." as well. (Complaint, para. 40, App. at A-86). To support his claim that Mrs. Bernstein paid co-conspirators (and the "under-cover" police witnesses who also served as her personal security guards in particular), hundreds of thousands of dollars (Complaint, para. 41, App. at A-86, 87), a request for production of documents was served

---

November 25, 1980, when Mrs. Bernstein testified that she received annoying telephone calls from someone she thought was her husband, and a detective from the district attorney's office testified that one Dennis Morgan, a former inmate at Northhampton County Prison, said that Bernstein visited him after the trial and asked Morgan to kill Nancy Bernstein and harm or kill Padrone, Murtaugh, and others associated with the district attorney's office. As set forth below, the testimony concerning Morgan was confirmed as false. When the Superior Court remanded the Bernstein criminal matter for a hearing on the after-discovered evidence, petitioner was released on bail pending the outcome of the hearing. He was re-incarcerated on September 9, 1983, when Judge Morrison reinstated the sentence.

On July 31, 1984, Bernstein filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Pennsylvania (*Bernstein v. Ryan, et al.*, No. 84-3700 (E.D. Pa.), which was assigned to Judge Cahn as a matter related to this civil rights action. Judge Cahn rejected petitioner's "futility doctrine" claims, and dismissed the habeas petition for failure to exhaust state judicial remedies on December 10, 1984. Thereafter, that part of the habeas corpus petition which raised claims relating to the improper revocation of bail pending appeal, was reinstated. To prove his claims in that action, petitioner filed a writ of habeas corpus *ad testificandum* requesting the Court to order that Dennis Morgan be brought from an Ohio prison to the Eastern District of Pennsylvania, to testify on Bernstein's behalf. Neither the habeas petition seeking review of the order revoking petitioner's bail, nor the *ad testificandum* habeas petition, were ever ruled upon by the District Court. At the court's request, petitioner's petition for a writ of habeas corpus was withdrawn without prejudice shortly after he was released on parole.

upon Mrs. Bernstein. After considerable resistance, she produced one hundred and forty two checks (142) totalling $200,502.24, which she had paid to the alleged co-conspirators and/or their associates from 1978 through August of 1983. (A copy of Mrs. Bernstein's Response to the Request for Production of Documents is reproduced in the Appendix at A-97 to A-145.) Significantly, $81,042.00 of those checks were paid to the "under-cover" police witnesses after August, 1981; and $71,623.00 of that amount was paid out after the complaint was filed.[10]

Procedural Background

On September 27, 1983, the District Court granted motions to dismiss the complaint which had been filed by District Attorney William Platt, the Commonwealth of Pennsylvania, the Catasaqua Police Department, the Allentown Police Department, and the County of Lehigh; and granted motions for summary judgment which had been filed on behalf of James McCarthy and Donald Layton. The Court also ordered that:

> 18. In regard to all defendants remaining in the case, all of plaintiff's claims based upon 42 U.S.C. §§ 1981, 1985 and 1986 are DISMISSED with prejudice in that plaintiff's alleged cause of action can be maintained pursuant to 42 U.S.C. § 1983. . . .

---

10. Available evidence demonstrated that Mrs. Bernstein paid $156,473.67 directly to the "under-cover" police witnesses; bearer bonds which belonged to petitioner totalling $48,912.63 were also cashed by the police witnesses. The checks and bonds cashed by police witnesses totalled $205,386.30. Checks and bonds totalling another $85,501.76 are reasonably believed to have been paid over to the private security guard/undercover agents, and checks and bonds totalling $8,679.16 are known to have been paid by Mrs. Bernstein to other witnesses who testified at petitioner's criminal trial. The grand total of known direct payments to police witnesses, bonds and cash withdrawals paid to them, and checks and bonds to other witnesses is $299,565.22.

A copy of the District Court's September 27, 1983 Order is reproduced in the Appendix at A-4.

By Memorandum Opinion of February 8, 1985 (Appendix at A-7), the District Court viewed petitioner's claims under 42 U.S.C. § 1983 as causes of action for false arrest or false imprisonment, applied the two (2) year limitation period provided in 42 Pa. Cons. Stat. Ann. § 5524(1) (Purdon Supp. 1984), and held that petitioner's causes of action under § 1983 are barred by the statute of limitations. On the same date the Court entered a final Order granting defendants' motions for summary judgment terminating petitioner's case. Appendix at A-16.

Petitioner's motion for reconsideration was denied by Order entered May 13, 1985 (Appendix at A-17), Judge Cahn noting that since the date of his final Order (App. at A-16), this Court decided *Wilson v. Garcia*, ____U.S. ____, 305 S.Ct. 1938 (1985), which held that for statute of limitations purposes, claims under 42 U.S.C. § 1983 are to be treated as personal injury actions, subject to the same two year limitation period under 42 Pa. Cons. Stat. Ann. § 5524 (2).

On appeal, the United States Court of Appeals for the Third Circuit affirmed, upon the following grounds:

> We agree with the district court that the gravamen of Bernstein's complaint, no matter which of the federal statutes he relies on, is that the defendants conspired to cause him to be falsely arrested and imprisoned. His cause of action arose in March 1980 when he knew, or with reasonable diligence should have known, of the conspiracy.[2]
>
> We have already held that section 1981 actions based on allegedly unlawful acts committed in Pennsylvania brought in federal district courts located in Pennsylvania are governed by the two-year statute of limitations prescribed by 42 Pa. Cons. Stat. Ann. § 5524 (Purdon 1981). *See Goodman v. Lukens Steel*

Co., No. 84-1478 & 84-1509, slip op. at 15-16 (3d Cir. Nov. 13, 1985). Bernstein filed his complaint on July 18, 1983, over three years after his cause of action arose. Consequently, his section 1981 claim is time-barred.

As for his section 1981, 1985, and 1986 claims, Bernstein urges that we not apply to them the same two-year statute of limitations. However, he advances, and we know of, no persuasive reasons for applying a different statute of limitations. We hold that 42 Pa. Cons. Stat. Ann. § 5524 (Purdon 1981) also bars these claims.

2. Federal law determines when the cause of action arose. *Deary v. Three Un-named Police Officers*, 746 F.2d 185, 197 n. 16 (3d Cir. 1984).

The opinion of the Court of Appeals is reproduced in the Appendix at A-1.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD DETERMINE THE APPROPRIATE CHARACTERIZATION OF ACTIONS UNDER 42 U.S.C. §§1981 & 1985

In *Wilson v. Garcia*, ___ U.S. ___, 105 S.Ct. 1938 (1985), this Court recently held that an action under 42 U.S.C. §1983 should be considered a personal injury action for purposes of borrowing an appropriate state statute of limitations.

In September, 1983, the district court in this case dismissed petitioner's claims under 42 U.S.C. §§1981, 1985, and 1986 and the case proceeded as an action under 42 U.S.C. §1983. App. at A-6. Thereafter, relying upon *Wilson v. Garcia*, the district court applied Pennsylvania's two year statute of limitations for personal injury actions, 42 Pa. Cons. Stat. Ann. §5524(2) (Purdon Supp. 1984), ruled that petitioner's section 1983 claims are time-barred, and granted summary judgment in favor of the defendants who remained in the case. App. at A-17.

On appeal, the United States Court of Appeals for the Third Circuit affirmed. *Bernstein v. Commonwealth of Pennsylvania*, No. 85-1371 (3d Cir. Jan. 15, 1986), Appendix at A-1. Relying upon its recent decision in *Goodman v. Lukens Steel Co.*, 777 F.2d 113 (3d Cir. 1985) (see Appendix at A-18), the court below stated that "[w]e have already held that section 1981 actions based on allegedly unlawful acts committed in Pennsylvania brought in federal district courts located in Pennsylvania are governed by the two-year statute of limitations prescribed by 42 Pa. Cons. Stat. Ann. §5524 (Purdon 1981) . . . ." The Court of Appeals held, *inter alia*, that petitioner's claims under 42 U.S.C. §§1981 and 1985 are time-barred. In *Goodman, supra*, the Court of Appeals held that the principles of *Wilson v. Garcia, supra*, were applicable to section 1981 claims.

Although the court below and the district court approached the questions quite differently, for statute of limitations purposes, both courts lumped all of petitioner's civil rights claims together as if only a section 1983 claim was asserted, both held that petitioner's civil rights claims are barred by Pennsylvania's two-year statute of limitations 42 Pa. Cons. Stat. Ann. §5524 (Purdon Supp. 1984), and both reached that result upon the basis of *Wilson v. Garcia*, ____ U.S. ____, 105 S.Ct. 1938 (1985). Accordingly, this case appropriately offers this Court the opportunity to resolve whether the principles announced in *Wilson v. Garcia*, control the selection of the appropriate state statute of limitations for actions brought under 42 U.S.C. §§1981 and 1985, as well. These important questions of federal law regularly affect the due process rights of civil litigants in the federal courts, and should be resolved by this Court.

As indicated above, in reaching its decision in the instant case, the court below relied upon *Goodman v. Lukens Steel Co.*, 777 F.2d 113 (3d Cir. 1985) (*see* slip op. No. 84-1478 & 84-1509, Appendix at A-18, A-26, 27) in ruling that petitioner's section 1981 claim is time-barred. A petition for a writ of certiorari in *Goodman* was filed on April 4, 1986, raising questions related to applicability and retroactivity of *Wilson v. Garcia*, to section 1981 claims, which are substantially identical to those presented here. Accordingly, Petitioner Bernstein joins the Petitioners in *Goodman*, in asking this Court to review these questions, for the reasons set forth in the *Goodman, et al.* Petition (which are incorporated herein by reference), and for the reasons set forth below.

In *Wilson v. Garcia*, this Court reasoned that: under 42 U.S.C. §1988 federal law governs the characterization of §1983 claims for statute of limitations purposes, *id.*, ____U.S. ____, 105 S.Ct. at 1943-44; that it is desirable for all §1983 claims to be given the same characterization, without regard to the specific facts of each case, *id.*, ____U.S. ____, 105 S.Ct. at 1944-47; and held

that in light of the history, purpose and application of section 1983, all claims under that statute should be characterized as personal injury actions, *id.*, ____U.S. ____, 105 S.Ct. at 1947-49. However, *Wilson* does not hold that actions under 42 U.S.C. §1981 or the other reconstruction civil rights statutes are subject to the same characterization. Accordingly, unless this Court sees fit to standardize the characterization of claims under the other provisions, for statute of limitations purposes, as it did in regard to §1983, the federal courts must continue to apply the statute of limitations which would be applicable in the courts of the state in which the federal court is sitting had the action seeking similar relief been brought under state law, on a case-by-case basis. *Polite v. Diehl*, 507 F.2d 119, 122 (3d Cir. 1974) (en banc); *Deary v. Three Un-named Police Officers*, 746 F.2d 185, 197 (3d Cir. 1984). See also, *Board of Regents v. Tomanio*, 446 U.S. 478, 483-4 (1980); *Burnett v. Grattan*, ____ U.S. ____, 104 S.Ct. 2924 (1984).

The Third Circuit, however, has taken a different approach in *Goodman v. Lukens Steel Co.*, 777 F.2d 113 (3d Cir. 1985), upon which its ruling in this case is based. *Goodman*, holds that *Wilson v. Garcia* requires claims under 42 U.S.C. §1981 (as well as §1983) to be characterized as personal injury actions for purposes of selecting the appropriate state statute of limitations. *Id.*, Appendix at A-18. Moreover, the court in *Goodman* applied its decision retroactively, which reduced the limitation period from six to two years.[11] *Id.* Concerning the retroactive application of *Wilson v. Garcia*, the Third Circuit's decision in *Goodman*, conflicts with the decisions

---

11. *But see Al-Khazraji v. St. Francis College*, 784 F.2d 505 (3d Cir. 1986), distinguished from *Goodman*, where the Third Circuit, applying the retroactivity principles of *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), applied only prospective application of *Wilson v. Garcia* to characterize a cause of action under 42 U.S.C. §1981 for statute of limitations purposes.

of the United States Court of Appeals for the Ninth Circuit. *See Rivera v. Green*, 775 F.2d 1381 (9th Cir. 1985); and *Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1985).[12]

In the Sixth Circuit, the retroactive application of *Wilson v. Garcia*, resulted in the dismissal of plaintiff's claims under 42 U.S.C. §§1983 and 1985. *Mulligan v. Hazzard*, 777 F.2d 340 (6th Cir. 1985). And since *Wilson v. Garcia*, several district courts have characterized section 1981 claims as "personal injury" actions. *See Anderson v. University Health Center*, 623 F. Supp. 795 (W.D. Pa. 1985); *Saldivar v. Cadena*, 622 F. Supp. 949 (W.D. Wisc. 1985); *Berry v. E.I. Dupont De Nemours & Co.*, 625 F. Supp. 1364 (D. Del. 1985); *but see Pender v. National Railroad Passenger Corp.*, 625 F. Supp. 252 (D.D.C. 1985), which stated that section 1983 claims and section 1981 claims are not necessarily governed by the same statute of limitations; *see also, Hobson v. Brennan*, 625 F. Supp. 459 (D.D.C. 1985).[13] The need for

---

12. *Rivera* and *Gibson*, *supra*, are both section 1983 cases involving the application of *Wilson v. Garcia*. In *Rivera*, 775 F.2d 1381 (9th Cir. 1985), *Wilson v. Garcia* was applied retroactively and as a result the limitation period was increased from one to two years. *Id.*, at 1384. In *Gibson*, 781 F.2d 1334 (9th Cir. 1985), the Ninth Circuit refused to apply *Wilson* retroactively, where it would have resulted in a shorter limitation period. *Id.*, at 1340.

13. The courts characterized §1981 claims as personal injury actions without reference to the history, purpose, or application of §1981 in *Anderson*, 623 F. Supp. 795 (W.D. Pa. 1985) and *Berry*, 625 F.Supp. 1364 (D. Del. 1985). However, in *Pender*, 625 F.Supp. 252 (D.D.C. 1985), the court stated §1983 and §1981 claims were not necessarily governed by the same statute of limitations because these statutes were passed at different times and seek to remedy different types of civil rights violations. In *Hobson*, 625 F.Supp. 459 (D.D.C. 1985), the court stated that it is not clear that *Wilson* requires that the same statute of limitations which governs §1983 claims also be applied to §1985 actions, but if a single statute must be selected, the statute must provide time for the preparation of a

guidance by this Court is readily apparent.

II. THIS COURT SHOULD RESOLVE WHETHER *WILSON V. GARCIA* SHOULD BE APPLIED RETROACTIVELY

As set forth above, there is a conflict in the circuit courts of appeals on questions related to the retroactive application of *Wilson v. Garcia*, to section 1983 actions. *Compare, Goodman v. Lukens Steel Co.*, 777 F.2d 113 (3d Cir. 1985), Appendix at A-1, with *Rivera v. Green*, 775 F.2d 1381 (9th Cir. 1985); and *Gibson v. United States*, 781 F.2d 1334 (9th Cir. 1985). This case in its present posture raises a related question. If *Wilson v. Garcia* dictates the character of section 1981 and 1985 actions for statute of limitations purposes, does that case have retroactive application to actions brought under 42 U.S.C. §§1981 and 1985. In *Goodman* and in this case with *Goodman* cited as controlling, the Third Circuit has answered both inquiries in the affirmative.

The retroactivity of a newly established principle of law, in general, is controlled by this Court's decision in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). In *Chevron*, this Court established three criteria by which courts should determine whether to apply statute of limitations decisions retroactively:

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding as issue of first impression whose resolution was not clearly foreshadowed . . . Second, it has been stressed that "we must *** weigh the merits and demerits in each case by looking to the prior history of the rule in question, its

complex conspiracy, thereby preferring a three year general statute of limitations for personal injuries rather than a one year statute of limitations for assault, libel and slander claims. *Id.*

> purpose and effect, and whether retrospective operation will further or retard its operation." . . . Finally, we have weighed the inequity imposed by retroactive application, for "[W]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."

404 U.S. at 106-07 (citations omitted).

Petitioner submits that the holding of the court below (in terms of retroactivity as well as the applicability of *Wilson v. Garcia* to section 1981 and 1985 actions), produces an inequitable result of the kind *Chevron* was intended to prevent.[14]

Petitioner submits that if *Wilson v. Garcia* did not control the selection of the statute of limitations for his section 1981 and 1985 claims, and was not retroactively applied to his section 1983 claims, his claims would be subject to the six year limitation period prescribed by 42 Pa. Cons. Stat. Ann. §5527, rather than the two year period of 42 Pa. Cons. Stat. Ann. §5524.

Although the Court below agreed with the district court, that the gravamen of petitioner's complaint amounts to a cause of action for false arrest or false imprisonment [subject to a two-year limitation period 42 U.S.C. §5524(1)], petitioner submits that its conclusion in this regard is overly simplistic and erroneous. The common thread that runs through each of petitioner's claims is the element of deceit, trickery, and fraud.

Indeed, petitioner has maintained from the outset that he was the victim of a fraudulent conspiracy by those who wished to deprive him of his liberty, and appropriate his wealth. The brief scenario which follows,

14. This is true, petitioner submits, notwithstanding the correctness of petitioner's claim that the statute of limitations in a continuing conspiracy, runs from the date of the last overt act in furtherance of the conspiracy. See Section III, *infra*.

will suffice to make the point. In 1978 when petitioner and Mrs. Bernstein first separated, both were very well known in the Allentown, Pennsylvania area. For that reason, petitioner sought the services of a non-local private detective to investigate his wife's adultery. Petitioner asked Coleman if he knew an out-of-town investigator, and Coleman introduced him to Alvin. Coleman and Alvin represented to petitioner that Alvin was an investigator from Chicago, that his services were available, but he wanted a $5,000.00 cash retainer in advance. After petitioner and Coleman met Alvin at the airport, they went to his hotel room where petitioner gave Alvin the $5,000.00 in cash he requested as a retainer for his services as a private detective. A few hours later, petitioner was arrested at his home. Alvin and Coleman later testified that Alvin was working as an "undercover" Catasaqua Police Officer, with Padrone, Murtaugh, and other police officers (who also worked for Mrs. Bernstein as private security guards); that Bernstein offered Alvin $15,000.00 to kill Nancy Bernstein and gave him $5,000.00 in advance, to do the job. Petitioner never got the $5,000.00 back; bearer bonds which belonged to petitioner were cashed by the under-cover/private security agents; and Mrs. Bernstein started disposing of petitioner's valuables.

Clearly, these facts (viewed in the light most favorable to petitioner for summary judgment purposes) state a cause of action for fraud and deceit. Actions for fraud and deceit were covered by Pennsylvania six-year statute of limitation, 42 Pa. Cons. Stat. Ann. §5527(6) (Purdons 1981) which covers "any civil action or proceeding which is neither subject to another limitation specified in this sub-chapter nor excluded from the application of a period of limitations by §5531 (relating to no limitation)."

Appendix, at A-77-78.[15] The complaint was filed in July 1983, less than six years from the earliest possible accrual date [November, 1978].

Petitioner was justified in relying on the six-year statute of limitations, which have governed a variety of civil rights claims. *See, Portnoy v. Pennick*, 595 F. Supp. 1000 (M.D. Pa. 1984) (action by investigator for liquor control board who was disciplined for asserting the fifth amendment in state senate proceeding, was subject to six-year state statute of limitations for civil rights action against public officials under 42 U.S.C. §1983); *Safeguard Mutual Insurance Co. v. Miller*, 477 F. Supp. 299, (E.D. Pa. 1979) (where a 42 U.S.C. §1983 complaint alleged that state insurance officials conspired to prevent insurers from conducting lawful insurance business, the six-year limitations period for interference with business and contractual relations governed, notwithstanding that some of the overt acts involved defamation and some simple trespass to property); *Dupree v. Hertz Corp.*, 419 F. Supp. 764 (E.D. Pa. 1976) (six year limitation for actions on contract was applied in employment discrimination class action brought under Civil Rights Act dealing with conspiracies to deprive persons of rights or privileges in violation of 42 U.S.C. §§1981, 1983 and 1985. Moreover, even if the applicable statute of limitations was an unresolved issue, so long as petitioner took a reasonable position, retroactive reduction of the statute of limitations in the present case is insupportable. *See Mineo v. Port Authority of New York & New Jersey*, 779 F.2d 939 (3d Cir. 1985).

In the instant case, *Wilson v. Garcia*, cannot be applied retroactively, without undermining the principles established in *Chevron*, 404 U.S. 97 (1971).

---

15. 42 Pa. Con. Stat. Ann. §5524(7) now prescribes a two-year limitation period for actions based upon fraud or deceit. [amended December 20, 1982, Pa. L. 1409, No. 326, art. II, §201 effective in 60 days]. Appendix at A-78-79.

III. THIS COURT SHOULD ESTABLISH A UNIFORM STANDARD FOR DETERMINING THE DATE THE STATUTE OF LIMITATIONS BEGINS TO RUN IN CONTINUING CONSPIRACY CASES

The date a civil rights cause of action accrues and the limitation period begins to run is determined by federal law. *Cope v. Anderson*, 331 U.S. 461, 464 (1947); *Fisher v. Whiton*, 317 U.S. 217, 220 (1942); *Rawlings v. Ray*, 312 U.S. 96, 98 (1941); *Deary v. Three Un-named Police Officers*, 746 F.2d 185, 197 n. 16 (3d Cir. 1984). This question is of equal, if not greater importance than the selection of the appropriate statute of limitations in a case such as this, where an ongoing conspiracy involving a continuing pattern of overt acts, including the payment of more than $200,000 to corrupt police officials, is alleged. The decision of the Court below, that for statute of limitations purposes, petitioner's ". . . cause of action arose in March 1980 when he knew, or with reasonable diligence should have known, of the conspiracy . . ." *Bernstein*, No. 85-1371 (3d Cir. Jan. 15, 1986), App. at A-2, *citing Deary*, conflicts not only with the decisions of other circuit courts which hold that in conspiracy cases, the limitation period begins to run with each overt act causing damage, *Buford v. Tremayne*, 747 F.2d 445 (8th Cir. 1984); *White v. Bloom*, 621 F.2d 276, 281 (8th Cir. 1980), *cert. denied*, 449 U.S. 995 (1981); *Blackwelder v. Millman*, 522 F.2d 766 (4th Cir. 1975); *Bergschneider v. Denver*, 446 F.2d 569 (9th Cir. 1971), but with prior law in the Third Circuit as well. *Wells v. Rockefeller*, 728 F.2d 209 (3d Cir. 1984).

This Court has held that in criminal conspiracy cases, the statute of limitations runs from the last overt act during the existence of the conspiracy. *Fiswick v. United States*, 329 U.S. 211, 216 (1946); *Brown v. Elliot*, 225 U.S. 392, 401 (1912). The ruling of the court below is contrary to the teachings of these cases. Petitioner submits that there is no reason that a different rule

should govern conspiracy cases in civil rights litigation, that this Court should fix a uniform standard to determine the time the statute of limitations begins to run in all federal conspiracy cases, and that this case offers the opportunity to make that determination and put these questions to rest.

IV. THIS COURT SHOULD EXERCISE ITS POWER OF SUPERVISION TO REVIEW THE DECISIONS OF THE COURTS BELOW

To be sure, petitioner's claims of police and official corruption have not won him a great deal of popularity in the Allentown, Pennsylvania area. But the subject civil rights legislation was not intended to protect the popular. Despite petitioner's claims that as late as May, 1983, the recanting witness was coerced into retracting his recantation testimony, and indisputable evidence that large sums of money were paid to the alleged perpetrators less than two years before (and even after) the complaint was filed, the district court rejected these contentions summarily, and the court of appeals did not even address them. Indeed, it appears that the courts below have made short shrift of meritorious arguments to facilitate the dismissal of petitioner's unpopular claims without a trial. It is assumed that in this day and age where official corruption is an everyday occurrence and police corruption trials consume a good portion of the federal courts' time, as a matter of policy, this Court will jealously protect the federal courts from unwittingly being influenced in favor of would-be law enforcement authorities, especially in a sensitive case like this, where an unpopular litigant has raised sensitive questions about important persons in a small closely-knit community. Petitioner submits that by affirming the decision of the district court dismissing all of petitioner's claims upon the grounds and in the manner herein set forth, the court of appeals below has sanctioned a departure so far from the

acceptable and usual judicial standards, as to warrant the exercise of this Court's power of supervision.

In this context, petitioner notes that on appeal, the court below ignored petitioner's contentions: that the statute of limitations was tolled by overt acts in furtherance of a continuing conspiracy; that his claims under 42 U.S.C. §§1981, 1985, and 1986, were improvidently dismissed by the district court at the early stages of the proceedings. (See section "V", *supra*); that District Attorney Platt's Motion to Dismiss should have been denied; and that summary judgment was improperly granted in favor of Lehigh County.[16]

V. ALTERNATIVELY, THIS COURT SHOULD CONSIDER REMANDING THIS CASE FOR FURTHER PROCEEDINGS, OR FOR CLARIFICATION

At the early stages of the litigation, the district court dismissed petitioner's claims under 42 U.S.C. §§1981, 1985, and 1986 "with prejudice in that plaintiff's alleged cause of action can be maintained pursuant to 42 U.S.C. §1983 . . ."[17] Appendix at A-4. Thereafter, the district court ruled only that petitioner's section 1983 claims are barred by the applicable two-year statute of limitations, and on that basis granted summary judgment in favor of

16. Platt's Motion to Dismiss was based on prosecutorial immunity. However, there was an allegation supported by factual evidence in response to petitioner's motion for production of documents, demonstrating that Mrs. Bernstein made one or more payments to Platt or his campaign fund. For purposes of a motion to dismiss, the facts alleged in the complaint are viewed as true. Moreover, receipt of funds falls outside the scope of Platt's duties as a prosecutor, rendering immunity inapplicable. Lehigh County's motion for summary judgment was based upon a solicitor's affidavit on information and belief. F.R.Civ.P. 56(e) requires summary judgment affidavits to be made on personal knowledge. The motion for summary judgment should have been denied.

17. Petitioner has maintained consistently that there is no legal authority to justify the dismissal of his section 1981, 1985, and 1986 claims on this basis.

the defendants remaining in the case. *See Bernstein v. Padrone*, No. 83-3431, slip op. (E.D. Pa. Feb. 8, 1985), (App. at A-7 - A-15), Order entered Feb. 8, 1985 (App. at A-16), and Order on Reconsideration entered May 13, 1985 (App. at A-17).

On appeal to the Third Circuit, petitioner claimed, *inter alia*, that the district court improperly ruled that his cause of action under 42 U.S.C. §1983 was time-barred; and that the district court improperly dismissed his section 1981, 1985, and 1986 claims for the reasons set forth above. The Court of Appeals did not address the question of whether the section 1981, 1985, and 1986 claims were properly dismissed.[18] Regarding these claims, the court below stated: "As for his section 1981, 1985, and 1986 claims, Bernstein urges that we not apply to them the same two-year statute of limitations. However, he advances,[19] and we know of, no persuasive reasons for applying a different statute of limitations. We hold that 42 Pa. Cons. Stat. Ann. §5524 (Purdon 1981) also bars these claims." Appendix A-3. In sum, the court below ruled on questions which were not before it, and failed to rule on questions that were. Petitioner submits that he is entitled to an intelligent review of his claims on appeal and asks this court to exercise its supervisory authority to grant the relief requested below.

If this Petition for a Writ of Certiorari to review the substantive questions set forth above is not granted, petitioner requests in the alternative, that this case be remanded for further proceedings or for clarification of the

18. Indeed, the court below did not expressly hold that petitioner's claim under 42 U.S.C. §1983, is barred by the statute of limitations. However, it did affirm the decision of the district court which addressed the statute of limitations question in terms of §1983 only.

19. Reasons for the application of a different limitation period to the section 1981, 1985, and 1986 were not advanced on direct appeal because the district court did not dismiss the claims under these sections on the basis of the statute of limitations; therefore, the question was not before the Court of Appeals.

record, either: 1) to the court of appeals below to determine whether in its view, the district court properly dismissed petitioner's claims under 42 U.S.C. §§1981, 1985 and 1986; or 2) to the district court to determine whether in its view, the section 1981, 1985, and 1986 claims are barred by the statute of limitations.

CONCLUSION

For the reasons set forth above, petitioner respectfully requests that this petition be granted, and that this Court issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully Submitted,

ELIZABETH K. AINSLIE, ESQUIRE
3100 PSFS Building
Philadelphia, Pa. 19107
(215) 574-0800

Robert J. Vedatsky, Esquire*
Theodore Q. Thompson, Esquire**

VEDATSKY & ASSOCIATES
Packard Bldg., 24th Floor
15th & Chestnut Streets
Philadelphia, PA 19102
(215) 922-7318

Attorneys for Petitioner
**Counsel of Record in Court of Appeals*
***Counsel of Record in District Court*